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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

GARLAND TERRELL NORMAN, JR.,

Defendant and Appellant.

F071340

(Super. Ct. Nos. 1469820 &  
1474631)

**OPINION**

**THE COURT\***

APPEAL from an order of the Superior Court of Stanislaus County. Scott T. Steffen, Judge.

Robert L.S. Angres, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris and Xavier Becerra, Attorneys General, Gerald A. Engler, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Carlos A. Martinez and Catherine Tennant Nieto, for Plaintiff and Respondent.

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\* Before Levy, Acting P.J., Poochigian, J. and Detjen, J.

In 2015, defendant Garland Terrell Norman, Jr., appealed, contending the trial court erred when it imposed a one-year prior prison term enhancement after the conviction underlying the enhancement had been reduced to a misdemeanor under Proposition 47. In 2016, we affirmed. The Supreme Court granted review and has now transferred the case back to us to vacate our decision and reconsider the case in light of *People v. Buycks* (2018) 5 Cal.5th 857 (*Buycks*), filed on July 30, 2018. We strike the enhancement and remand for resentencing.

### **BACKGROUND**

On April 25, 2014, in case No. 1469820, defendant pled no contest to receiving stolen property (Pen. Code, § 496, subd. (a))<sup>1</sup> and admitted three prior prison term allegations (§ 667.5, subd. (b)), one of which was based on a 2007 felony conviction for possession of a controlled substance (Health & Saf. Code, § 11377) in case No. 1223142.

On September 17, 2014, in case No. 1474631, defendant pled no contest to second degree burglary (§ 459) and admitted the same three prior prison term allegations (§ 667.5, subd. (b)).

The same day, the trial court sentenced defendant in both cases to an aggregate term of five years eight months, as follows: In case No. 1469820, the court imposed two years for the receiving stolen property conviction, plus three one-year prior prison term enhancements. In case No. 1474631, the court imposed eight consecutive months for the burglary conviction.

On November 4, 2014, California voters enacted Proposition 47, the Safe Neighborhoods and Schools Act, and it went into effect the next day. (*People v. Rivera* (2015) 233 Cal.App.4th 1085, 1089 (*Rivera*).)

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<sup>1</sup> All statutory references are to the Penal Code unless otherwise noted.

On December 17, 2014, defendant filed a petition under Proposition 47 for resentencing of the conviction for receiving stolen property, the current felony conviction in case No. 1469820. The clerk's transcript does not contain a Proposition 47 petition for case No. 1223142, but the reporter's transcript makes clear that on March 11, 2015, the trial court considered and granted both petitions, reducing the receiving stolen property conviction to a misdemeanor in case No. 1469820, and reducing two convictions to misdemeanors in case No. 1223142, including the 2007 conviction for possession of a controlled substance, the offense underlying one of the prior prison term allegations in case Nos. 1469820 and 1474631. Defendant moved to strike the prior prison term enhancement.

On March 26, 2015, the trial court denied defendant's motion to strike the prior prison term enhancement. The court then resentenced defendant as follows: In case No. 1474631, the court imposed two years for the burglary conviction, plus three one-year prior prison term enhancements. In case No. 1469820, the court imposed 180 consecutive days for the receiving stolen property misdemeanor conviction.

On March 27, 2015, defendant filed a notice of appeal in the current cases.

On July 21, 2016, we affirmed in *People v. Norman* (July 21, 2016, F071340, [nonpub. opn.]).

### **DISCUSSION**

"Proposition 47 makes certain drug- and theft-related offenses misdemeanors, unless the offenses were committed by certain ineligible defendants. These offenses had previously been designated as either felonies or wobblers (crimes that can be punished as either felonies or misdemeanors)." (*Rivera, supra*, 233 Cal.App.4th. at p. 1091.)

Proposition 47 also created a new resentencing provision, section 1170.18, which provides procedural mechanisms for (1) resentencing for inmates currently serving sentences for felonies that are now misdemeanors under Proposition 47 (§ 1170.18,

subds. (a), (b)); and (2) designation of such felonies as misdemeanors for persons who have already completed their sentences (§ 1170.18, subds. (f), (g)). (See *Rivera, supra*, 233 Cal.App.4th at pp. 1092-1093.) Once a felony is reduced to a misdemeanor under Proposition 47, it “shall be considered a misdemeanor for all purposes ....” (§ 1170.18, subd. (k).)

In *Buycks*, the Supreme Court resolved an issue on which the appellate courts had disagreed—whether a felony reduced to a misdemeanor under Proposition 47 can still function as the basis for a prior prison term enhancement. *Buycks* answered that “section 1170.18, subdivision (k) can negate a previously imposed section 667.5, subdivision (b), enhancement when the underlying felony attached to that enhancement has been reduced to a misdemeanor under [Proposition 47].” (*Buycks, supra*, 5 Cal.5th at p. 890.)

*Buycks* noted, however, that the mechanism for addressing these unsupported enhancements is not specified by Proposition 47: “Proposition 47 does not provide a specific mechanism for recalling and resentencing a judgment solely because a felony-based enhancement has been collaterally affected by the reduction of a conviction to a misdemeanor in a separate judgment.” (*Buycks, supra*, 5 Cal.5th at p. 892.) *Buycks* explained that “under some circumstances such challenges may be brought in a resentencing procedure under section 1170.18; they may also be brought on petition for writ of habeas corpus, in reliance on the retroactivity principle of *In re Estrada* (1965) 63 Cal.2d 740 (*Estrada*). In the latter instance, relief is limited to judgments that were not final at the time the initiative took effect on November 5, 2014.” (*Id.* at pp. 871-872.)

In the present case, the first option applies because defendant was resentenced after his current felony offense was reduced.<sup>2</sup> *Buycks* explained that when a trial court grants a Proposition 47 petition on a current felony conviction and thus is required to generally resentence the defendant, the court should at that time also consider a challenge to a prior prison term enhancement if the felony underlying it has also been reduced to a misdemeanor: “[A] person may petition for recall of his or her current sentence under section 1170.18, subdivision (a), upon which the trial court, when it resentences on the eligible felony conviction, must also resentence the defendant generally and must therefore reevaluate the continued applicability of any enhancement based on a prior felony conviction. [¶] ... [¶] Therefore, at the time of resentencing of a Proposition 47 eligible felony conviction, the trial court must reevaluate the applicability of any enhancement within the same judgment *at that time*, so long as that enhancement was predicated on a felony conviction now reduced to a misdemeanor. Such an enhancement cannot be imposed because at that point the reduced conviction ‘shall be considered a misdemeanor for all purposes.’ (§ 1170.18, subd. (k).) Under these limited circumstances, a defendant may also challenge any prison prior enhancement in that judgment if the underlying felony has been reduced to a misdemeanor under Proposition 47, notwithstanding the finality of that judgment.” (*Buycks, supra*, 5 Cal.5th at pp. 894-895; see *id.* at p. 896.)

Here, the trial court reduced both a current felony conviction and one underlying a prior prison term enhancement. Accordingly, under *Buycks*, when the court resentenced defendant, it erred in reimposing the enhancement that was no longer supported by a felony conviction. The enhancement must be stricken.

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<sup>2</sup> Thus, defendant is not required to proceed by way of petition for writ of habeas corpus and we need not treat his supplemental brief as a petition for writ of habeas corpus, as he requests. We note that the People chose not to submit a supplemental brief.

### **DISPOSITION**

The one-year prior prison term enhancement (Pen. Code, § 667.5, subd. (b)) based on the 2007 conviction for possession of a controlled substance (Health & Saf. Code, § 11377) is stricken. The case is remanded to the trial court for resentencing. “ ‘[A] full resentencing as to all counts is appropriate, so the trial court can exercise its sentencing discretion in light of the changed circumstances.’ ” (*People v. Buycks* (2018) 5 Cal.5th 857, 893.) In all other respects, the judgment is affirmed.